

RESOLUTION NO. 18- 63

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CENTRO
APPROVING A SERVICES AGREEMENT WITH WATCHGUARD FOR
SERVICES ASSOCIATED WITH MOBILE AUDIO VIDEO AND BODY-
WORN CAMERAS

WHEREAS, the El Centro Police Department had a need for a variety of enhanced and up to date mobile audio video and body worn cameras with back-up systems; and

WHEREAS, the Police Department obtained approval for an RFP for such systems, prepared and RFP, received four responses and identified the company which could best provide such services as set out in the RFP; and

WHEREAS, it now is necessary for the City Council of the City of El Centro, California ("the City Council") to approve a services agreement with WatchGuard, for project management services to the El Centro Police Department for services associated with mobile audio video and body-worn camera, ("the Agreement"); and

WHEREAS, the City Council finds that its approval of this Agreement is in the best interest of the City of El Centro, California ("the City").

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CENTRO, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

1. That the foregoing is true, correct and adopted hereby.
2. That the City Council does hereby approve the Agreement.
3. That the City's City Manager is hereby authorized to sign the Agreement, a copy of which is on file in the Office of the City Clerk, on behalf of the City.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of El Centro, California, held on the 19th day of June , 2018.

CITY OF EL CENTRO

By

Cheryl Viegas-Walker, Mayor

ATTEST:

By
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

By E H
Elizabeth L. Martyn, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

I, L. Diane Caldwell, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Resolution No. 18- 63 was duly and regularly adopted at a regular meeting of the City Council of the City of El Centro, California held on the 19th day of June, 2018 by the following vote:

AYES: Cardenas, Jackson, Viegas-Walker, Garcia, Silva
NOES: None
ABSENT: None
ABSTAINED: None

By L. Diane Caldwell, City Clerk



Date: June 19, 2018 ("Effective Date")

Service Provider:

WatchGuard, Inc. a corporation incorporated in the state of Delaware

Client:

El Centro Police Department
Attn: Sergeant John Seaman
150 North 11th Street
El Centro, California 92243

Principal Address of Service Provider:

415 Century Parkway
Allen, Texas 75013

Telephone Number: (866) 325-2836

WatchGuard Federal Tax Identification

Number: 11-3717781

Founded in 2002, WatchGuard has become the worldwide leader of law enforcement in-car video systems.

The City of El Centro and El Centro Police Department on behalf of itself and its affiliates (collectively and individually, "City") and Service Provider ("WatchGuard") agree to enter into this Services Agreement (the "Agreement") in accordance with the terms and conditions set forth as follows:

- 1. Term.** The Agreement shall commence upon June 19, 2018 and shall expire June 18, 2024 unless earlier terminated pursuant to Section 12. In no event will the term of this Agreement extend beyond six (6) years from the date of this Agreement unless extended by the parties by mutual written agreement.
- 2. Scope of Work.** WatchGuard will perform certain services and provide deliverables for City as described in the Statement of Work attached hereto as Schedule 1 (the "Initial Services"). Including, but not limited to having a Subcontractor remove old In-Car Camera Systems and replace with 27 new 4RE In-Car Video Systems and 27 Integrated Body Worn Cameras (all mounting hardware and cables are included). WatchGuard will deliver an additional 34 VISTA XLT Body Worn Cameras, docking bases and Transfer Stations for uploading video. WatchGuard will have Technician(s) on Site at El Centro Police Department to install and configure Access Points, and the City provided on premise server; a Redactive Tower, and 2 Interview Room Camera Systems. Setup will include Evidence Library 4 Data Management Software and REDACTIVE Redaction software installation. Warranties have been included for six (6) years for all hardware equipment including the 4RE In-Car Video Systems, VISTA XLT Body Worn Cameras, a Redactive Tower, two (2) Interview rooms and the EL4 and REDACTIVE software. WatchGuard does not provide a backup solution and does not perform backup of the "operating system" or "video storage" on the server, this is the responsibility of the agency for configuration and support. During the term of this Agreement, City may request WatchGuard to perform additional services which shall be outlined in an additional description of services acknowledged by both parties (e.g., through confirmatory email chain). Such additional Statement(s) of Work (the "Additional Services") shall be subject to the terms and conditions of this Agreement, in addition to any additional terms and conditions set forth in such Statement(s) of Work (collectively, "this Agreement".) The Initial Services and Additional Services, if any, shall



referred to collectively in this Agreement as the "Services". All Schedules and Exhibits attached hereto are hereby incorporated by this reference.

3. Agency Provided Services and equipment. City will provide on premise Dell brand server(s) for purposes of local storage. These servers will be placed in a rack and connected to a power source by members of the City of El Centro IT staff. City may choose to perform certain tasks or provide equipment needed to complete the agreed upon Scope of work. These services shall be described in the Statement of Work attached hereto as Schedule 1 (the "Initial Services") and detailed in Appendix A to Schedule 1. City acknowledges that these tasks or equipment are required and the Agency's failure to perform or deliver these tasks may result in additional costs and or delays.

4. Cloud-based Storage

- a. WatchGuard-Provided Cloud Storage. WatchGuard has estimated the Cloud storage pricing based on keeping evidentiary videos for a period of two years. WatchGuard will invoice City quarterly and based on actual usage, not estimated, at a rate of 3 cents per gigabyte per month. WatchGuard will share with City actual usage reported by Microsoft's Azure Government Cloud account billing to WatchGuard. In the event that actual usage exceeds estimated usage, City will only be invoiced to a maximum annual amount of \$27,000.00 annually.
- b. WatchGuard-Provided Cloud Backup Solution. All data stored by Microsoft's Azure Government Cloud will be replicated to ensure durability and high availability. Azure Storage replication will copy City data so that it is protected from planned and unplanned events ranging from transient hardware failures, network or power outages, massive natural disasters, and so on.

5. Term; Time of Completion. Notwithstanding any other provision of this Contract, the completion date for this installation shall be on or before twelve (12) weeks of receipt of a purchase order, barring any delays caused by City. Installation shall be deemed complete when all work is completed, fully executed releases as to any and all lien rights of any and all subcontractors have been received by City, and the time within which any liens, stop notices or other claims for payment by subcontractors, laborers, and/or material men can be asserted against City has expired.

Thereafter, Contractor shall provide maintenance and related services as set out on Exhibit "B" for a term of six (6) years, unless sooner terminated by City. City may terminate this Contract, without cause, at any time by providing Contractor with not less than 30 days' prior written notice. Provided Contractor is not then in breach, Contractor will be paid for work satisfactorily completed and for all deliverables received.

6. Fees. City will pay WatchGuard those fees and expenses, if any, in the amount and on the terms and conditions described in Schedule 1 for the performance of the Initial Services. In the event the parties agree to any Additional Services, the fee arrangement for the Additional Services shall be outlined in the applicable Statement of Work descriptions if different than the Initial Services.

7. Retention of Funds. WatchGuard authorizes City to deduct from any amount payable to WatchGuard (whether or not arising out of this AGREEMENT) any amounts the payment of which may be in dispute or that are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City and all amounts for which City may be liable to third parties, by reason of WatchGuard's acts or omissions in performing or failing to perform WatchGuard's obligations under this AGREEMENT. In the event that any claim is made by a third party, the amount or validity of which is disputed by WatchGuard, or any indebtedness exists that appears to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of the



withholding, an amount sufficient to cover the claim. The failure of City to exercise the right to deduct or to withhold will not, however, affect the obligations of WatchGuard to insure, indemnify, and protect City as elsewhere provided in this AGREEMENT.

8. City Representative. Aaron Reel is designated as the "City Representative", authorized to act in its behalf with respect to the work and services specified in this AGREEMENT and to make all decisions in connection with this AGREEMENT. Whenever approval, directions, or other actions are required by City under this AGREEMENT, those actions will be taken by the City Representative, unless otherwise stated. The City's Chief Executive has the right to designate another City Representative at any time, by providing notice to Service Representative.

9. Vendor Representative(S). The following principal(s) of VENDOR are designated as being the principal(s) and representative(s) of VENDOR authorized to act in its behalf with respect to the work specified in this AGREEMENT and make all decisions in connection with this AGREEMENT:

9. Business License. WatchGuard must obtain a City business license prior to the start of work under this AGREEMENT, unless WatchGuard is qualified for an exemption.

10. Other License and Permits. WatchGuard warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this AGREEMENT.

11. WatchGuard's Accounting Records; Other Project Records. Records of the WatchGuard's time pertaining to the project, and records of accounts between City and the WatchGuard, will be kept on a generally recognized accounting basis. WatchGuard will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to City during normal working hours. WatchGuard will maintain these records for three (3) years after final payment.

12. Manner of Performance/Warranties.

(a) WatchGuard represents and warrants that it and WatchGuard's employees and authorized subcontractors performing Services hereunder (i) have the requisite expertise, ability and legal right to render the Services and will perform the Services in an efficient and timely manner; (ii) will abide by all laws, rules and regulations that apply to the performance of the Services, including applicable requirements regarding equal employment opportunity and (iii) its performance of the Services will not violate or in any way infringe any patent, trademark, copyright or other proprietary interest of any third party.

(b) WatchGuard shall maintain accurate and complete records specifically relating to the Services in accordance with generally accepted accounting principles and industry practices and retain such records for a period of one (1) year following the completion of the Services. City may audit such records during normal business hours upon prior notice to WatchGuard.

13. Confidentiality. In the course of performing the Services, it is anticipated that WatchGuard will learn of information that City regards as confidential or proprietary, including but not limited to, the nature of services, evidence and data relating to evidence, personally identifiable information, pricing, costs, know-how, strategies, programs, processes, and practices and confidential and



proprietary information City receives from third parties (collectively, "Confidential Information"). WatchGuard shall hold such Confidential Information in strictest confidence and shall exercise at least the same degree of care as it uses with its own most valuable information (but in no event less than reasonable care) to safeguard the confidentiality of the Confidential Information; and except as provided in this Agreement, the Confidential Information shall not be used, duplicated or in any way disclosed to others in whole or in part without the prior express written permission of Disclosing Party.

- 14. Independent Contractor.** WatchGuard is an independent contractor, not an employee or agent of City. Nothing in this Agreement shall render WatchGuard, or any of its employees, subcontractors or agents, an employee, subcontractor or agent of City, nor authorize or empower WatchGuard or its employees, subcontractors or agents to speak for, represent or obligate City in any way. WatchGuard assumes any and all liabilities regarding Section 1706 of the Tax Reform Act of 1986 and Section 414(n) of the Internal Revenue Code of 1986, as amended.

- 15. Indemnification.** WatchGuard shall indemnify, defend, and hold harmless the City, and its officers, employees and agents, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation ("claims"), arising out of the WatchGuard's performance of its obligations under this AGREEMENT or out of the operations conducted by WatchGuard, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City. In the event the City indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from WatchGuard's performance of this AGREEMENT, the WatchGuard shall provide a defense to the City indemnitees or at the City's option, reimburse the City indemnities their costs of defense, including reasonable legal fees, incurred in defense of such claims.

Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between the WatchGuard and City, as to whether liability arises from the sole negligence of the City or its officers, employees, or agents, WatchGuard will be obligated to pay City's defense until such time as a final judgement has been entered adjudicating the City as solely negligent. WatchGuard will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

- 16. Non-Liability of City Officers and Employees.** No officer or employee of City will be personally liable to WatchGuard, in the event of any default or breach by the City or for any amount that may become due to WatchGuard.
- 17. Insurance.** WatchGuard shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT

Other provisions or requirements:

Proof of Insurance. WatchGuard shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. WatchGuard shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by WatchGuard, his agents,



representatives, employees or sub-consultants.

Primary/noncontributing. Coverage provided by WatchGuard shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

CITY's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by WatchGuard or City will withhold amounts sufficient to pay premium from WatchGuard payments. In the alternative, City may cancel this AGREEMENT.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this AGREEMENT shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow WatchGuard or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. WatchGuard hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.

Enforcement of contract provisions (non estoppel). WatchGuard acknowledges and agrees that any actual or alleged failure on the part of the City to inform WatchGuard of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the WatchGuard maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the WatchGuard. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. WatchGuard agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that VENDOR's insurance shall apply separately to each insured against whom claim is



made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. WatchGuard agrees to ensure that its sub-consultants, sub-contractors, and any other party involved with the project who is brought onto or involved in the project by WatchGuard, provide the same minimum insurance coverage and endorsements required of WatchGuard. WatchGuard agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. WatchGuard agrees that upon request, all AGREEMENTS with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

CITY's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the VENDOR ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the WatchGuard, the City and WatchGuard may renegotiate Provider's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely notice of claims. WatchGuard shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from WatchGuard's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. WatchGuard shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

18. Subcontractors. Before WatchGuard retains or hires a subcontractor to provide any work, labor, or services relative to this AGREEMENT, WatchGuard must:

- (a) Present the name and identifying information of the subcontractor that will provide any work, labor, or services to City;
- (b) Present to the City the form of subcontract that will be used with the subcontractor for City's approval, which approval will not be unreasonably withheld. Such subcontract AGREEMENT must include an indemnity agreement that is generally in accord with the indemnity obligations contained in Paragraph 13 of this AGREEMENT and must specifically name the City as an indemnified party; and
- (c) Secure from the subcontractor evidence of insurance coverage that meets with this AGREEMENT including naming the City as an additional insured as required by this AGREEMENT, unless such requirement is waived in writing by the City Risk Manager as provided in Paragraph 17 below.

**19. Release of Information/Conflict of Interest.**

- (a) All information gained by CONTRACTOR in performance of this AGREEMENT shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-Contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.
- (b) CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents, or sub-Contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the City, unless the City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONTRACTOR is prohibited by law from informing the City of such Discovery. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONTRACTOR in such proceeding, CONTRACTOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.
- (c) The Contractor is subject to all Federal, State and local conflict of interest laws, regulations and policies applicable to public contracts and procurement practices, including but not limited to California Government Code §§1090 *et seq.* and §§81000 *et seq.* The Contractor shall complete one or more statements of economic interest disclosing relevant financial interests as described on Exhibit "D," which is the Contractor's statement of financial interest and is attached hereto and incorporated herein by this reference, which may be amended from time to time by the City. Upon the City's request, the Contractor shall submit the necessary supplementary documentation to the City.
- (d) The Contractor shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.
- (e) The Contractor's personnel employed on any task shall not accept gratuities or any other favors from the Subcontractors or any potential Subcontractors. In connection with any task, the Contractor shall not recommend or specify any product, supplier or contractor with whom the Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations or policies.
- (f) If the Contractor violates any conflict of interest laws or any of these provisions in section 4.10, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the Contractor to liability to the City for attorneys' fees and all damages sustained as a result of the violation.



20. Remedies. WatchGuard will promptly re-perform any Services not performed in accordance with the representations and warranties set forth in this Agreement at no additional expense to City to correct any non-conformance to City's reasonable satisfaction. If WatchGuard is unable within a reasonable time to comply with the foregoing obligations, WatchGuard will refund to City the lesser of (a) the amount paid for the non-conforming Services or (b) the last amount paid for the last invoice submitted to City. The remedies set forth in this paragraph are non-exclusive.

21. Termination.

- (a) City may terminate this Agreement effective the day of notice by giving WatchGuard written notice of termination if WatchGuard: (i) breaches any of its obligations, representations or warranties hereunder; or (ii) is placed on the List of Excluded Individuals/Entities or is banned from Government contracts by the General Services Administration.
- (b) If City determines that it no longer requires the services of WatchGuard, it may terminate this Agreement by giving WatchGuard fifteen (15) days written notice and agree to pay reasonable project ramp down fees not to exceed the total invoiced billings over the last 7 calendar days prior to termination notice.
- (c) In the event this Agreement or any Schedule is terminated by City without cause prior to expiration of the term of this Agreement, or as set forth in any Schedule, WatchGuard shall (i) immediately stop all work and upon City request, if applicable, transfer the project as expeditiously as possible; and (ii) not undertake further work, incur additional expenses, or enter into further commitments. WatchGuard shall be entitled to all undisputed payments due and owing under this Agreement at the time of any termination notice, for (i) work completed and accepted by City, (ii) work in progress up to the provisions in section 10b, and (iii) non- cancelable commitments with supporting documentation.
- (d) If City terminates this agreement prior to the end of a Service Period for breach of a material term or condition of this Agreement, WatchGuard shall refund to City an amount calculated by multiplying the total amount of Service Fees for any services prepaid by City for the then-current Service Period by the percentage resulting for dividing the number of days remaining in the then-current Service Period, by 365.

22. Notice. All notices, requests, demands, or other communications under this AGREEMENT will be in writing. Notice will be sufficiently given for all purposes as follows:

- (a) Personal delivery. When personally delivered to the recipient; notice is effective on delivery.
- (b) First Class mail. When mailed first class to the last address of the recipient known to the party giving notice; notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- (c) Certified mail. When mailed certified mail, return receipt requested; notice is effective on receipt, if delivery is confirmed by a return receipt.



- (d) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account; notice is effective on delivery, if delivery is confirmed by the delivery service.
- (e) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice; notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To CITY: City of El Centro
 Attn: Commander Aaron Reel
 1275 W Main Street
 El Centro, CA 92243

To Service Provider: WatchGuard Video
 Attn: Jeff Parker, Area Director
 415 Century Parkway
 Allen, TX 75013

- (f) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- (g) Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this AGREEMENT. Any change in address or fax number that is not provided to the other party will not void delivery of any notice under this AGREEMENT, and delivery to the last known address or fax number shall be deemed sufficient for notice under this AGREEMENT.

23. Prohibition Against Assignment and Subcontracting. This AGREEMENT and all exhibits are binding on the heirs, successors, and assigns of the parties. The AGREEMENT may not be assigned or subcontracted by either City or WatchGuard without the prior written consent of the other.

24. Integration Amendment. This AGREEMENT represents the entire understanding of City and WatchGuard as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this AGREEMENT. The AGREEMENT may not be modified or altered except in writing signed by both parties.

25. Compliance with Statutes And Regulations. WatchGuard will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.



26. Waiver of Breach. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this AGREEMENT.

27. Attorney's Fees. Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this AGREEMENT (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this AGREEMENT, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment, including post judgment attorney's fees costs and expenses and any attorneys' fees or costs incurred on appeal of any judgment.

28. Exhibits. All exhibits identified in this AGREEMENT are incorporated into the AGREEMENT by this reference.

29. General.

- (a) In the event of the actual or threatened breach of any of the terms of this Agreement, City will have the right to specific performance and injunctive relief. The rights granted by this paragraph are in addition to all other remedies and rights available at law or in equity.
- (c) No assignment by WatchGuard of this Agreement or any sums due under it will be binding on City without City prior written consent.
- (d) This Agreement shall be construed according with the laws of the State of California. Should either party to this Contract bring legal action against the other, the validity, interpretation, and performance of this Contract shall be controlled by and construed under the laws of the State of California. Venue for any such action relating to this Contract shall be in the Imperial County Superior Court.
- (e) None of the terms of this Agreement shall be amended or changed, except in writing signed by an authorized representative of each party, or as amended via confirmatory email chain from both parties.
- (f) Unless otherwise provided with a list of names of authorized representatives, a representative from either party engaging in an email chain, regarding the Services covered under this Agreement while using an official email address from their respected Party's email domain, is representing themselves as having the authority to make the claims, responses, or requests will be considered an authorized representative.
- (g) This Agreement, including all Schedules, Exhibits and any description of Additional Services signed/acknowledged by both parties, contain the entire agreement between the parties relating to the Services and supersede all prior oral or written agreements and understandings between the parties.

30. WatchGuard's Authority to Execute.

The persons executing this AGREEMENT on behalf of the VENDOR warrant that (i) the WatchGuard is duly organized and existing under the appropriate State laws; (ii) they are duly



authorized to execute this AGREEMENT on behalf of the WatchGuard; (iii) by so executing this AGREEMENT, the WatchGuard is formally bound to the provisions of this AGREEMENT; and (iv) the entering into this AGREEMENT does not violate any provision of any other AGREEMENT to which the WatchGuard is bound.

VENDOR:

By: _____
(Signature)

Mike Burridge
(Typed Name)

Senior Vice President of Sales
(Title)

CITY: City of El Centro
A Municipal Corporation

Marcela Piedra, City Manager

ATTEST:

L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Elizabeth L. Martyn, City Attorney

Attachments: Exhibit A Scope of Services
 Exhibit B Compensation Schedule
 Exhibit C Insurance Requirements
 Exhibit D Conflict of Interest/Disclosure



Exhibit A
Initial Services Statement of Work

Under the terms and conditions of the Services Agreement dated <Effective Date> by and between WatchGuard and City, the WatchGuard shall provide and deliver the Initial Services and Deliverables set forth below.

Provided Services:

WatchGuard will provide to City services resulting in the successful and satisfactory installation and configuration of the WatchGuard 4RE High Definition In-Car Video System with Integrated VISTA Wi-Fi and Evidence Library software. Table 1 lists the work required to complete a successful installation. The "Appendix A Reference Number" column represents the line item in which each party is responsible. If an "X" is listed under the "WGV" column then WatchGuard is responsible for that particular task. If an "X" is listed under the "Agency" column, then City is responsible for that particular task. Detail descriptions of each major section (indicated by Bold Text) are included in Appendix A which is incorporated by reference.

Table 1. Work Breakdown Structure

Appendix A Reference Number	WGV	Agency	Short Description (See Appendix A for details on each item)
SVR-01		X	Installation of server and backup server in Equipment Rack
SVR-02		X	Provide a suitable Rack
SVR-03		X	Mounting or Racking the Server
SVR-04		X	Connecting the server (Power (connector), KVM, Network Cabling and switches, JBOD, UPS)
SVR-05	X		Provide a physical or Virtual Server that meets the specified Server Requirements
SVR-06	X		Installation and configuration of Windows Operating System and disk storage systems
SVR-07	X		Provide Operating System License
SVR-08	X		Install and configure Operating System (Includes current patches)
SVR-09	X		Setup and perform backups
SVR-10	X		Setup recommended disk configuration
SVR-11	X		Install and configure for remote access
SVR-13		X	Installation and configuration of Backup Software:
SVR-14		X	WatchGuard does not perform backup of the "operating system" or "video storage" on the server, this is the responsibility of the agency.
SQL-01	X		Installation of Microsoft SQL Server
SQL-02	X		Provide SQL Server Licenses
SQL-03	X		Install and configure SQL Server
SQL-04	X		SQL Backup and Maintenance plan
SQL-05	N/A	N/A	Setup SQL Instance (if shared database server),
SQL-06	X		Provide Additional SQL Client Access Licenses to POC
EL-01	X		Installing and configuration of Evidence Library
EL-02	X		Install and configure Base Software
EL-03		X	Add Security Groups



EL-04	X		Configure Evidence Library
EL-05	N/A	N/A	Install and configure Upload Servers (if used)
EL-06	X		Installation of Evidence Library Clients on Agency's computers
EL-07		X	Provide client computers that meet client Hardware and Software requirements.
EL-08		X	Connect computers to Agency Network and Active Directory Domain
4RE-01	X		Configuring available 4RE DVR units
4RE-02	X		Create Configuration USB
4RE-03	X		Configure Each DVR as installs are completed
4RE-04	N/A	N/A	Change DVR IP configuration (if required)
4RE-05	N/A	N/A	MDC Application (if required)
4RE-06	N/A	N/A	Provide client computers that meet client Hardware and Software requirements for the MDC Application.
4RE-07	N/A	N/A	Install and configure MDC application on each computer.
4RE-08	N/A	N/A	Setup or configure in-car network for DVR to Computer connectivity which includes modifying Computer policy systems (i.e. NetMotion)
4RE-09	X		4RE System In-Car Installation
4RE-10	X		4RE Interview Room setup
VISTA-01	X		Configuring available VISTA WiFi cameras
VISTA-02	X		Create Configuration
VISTA-03	X		Configure Each VISTA camera
VISTA-04	X		Install/Configure Smart PoE Switch in Vehicle (if applicable)
VISTA-05	X		Install Transfer Station (if applicable)
TEST-01	X		Finish Testing Function of WatchGuard system
TEST-02	X		Complete Test checklist
TRAIN-01	X		Training
TRAIN-02	X		4RE DVR Installation Training
TRAIN-03	X		4RE and VISTA WiFi End User Training (Officers)
TRAIN-05	X		Evidence Library User Training (Officers/Supervisors)
TRAIN-06	X		Evidence Library Administrative Training
Close-01	X	X	Project Sign-Off

Exhibit B

Payment Schedule:

WatchGuard will demonstrate to the City of El Centro, through testing and demonstrations, that the 4RE and VISTA WiFi solution, and all its related components and software, are fully functional and representative of the products and services represented by WatchGuard. WatchGuard represents that it has the skills to perform the services required, and will invoice the City of El Centro according to the attached Price Estimate dated June 6, 2018.

The City agrees to pay the Contractor
as follows:

- 25% of total project costs upon the execution of this contract.
- 50% of total project costs upon installation of all equipment
- Final payment of 25% upon formal acceptance following the 60 Day Acceptance Period as outlined in the RFP.

WatchGuard, Inc.	The City of El Centro
M. Burridge By: _____ (Signature)	Marcela Piedra By _____ (Signature)
Printed Name: Mike Burridge Title: Senior Vice President of Sales	Printed Name: Marcela Piedra Title: City Manager

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Proof of insurance. CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by CITY's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or sub consultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

CITY's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of A.M. Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its sub consultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its sub consultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

CITY's right to revise specifications. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

Timely notice of claims. CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Claims-made limitations. The following provisions shall apply if any of the required policies are written on a claims-made basis:

- a. The Retroactive Date of the policy must be shown and must be before the date of the Agreement or the beginning of the contracted work.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement or the work.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a Retroactive Date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the Agreement or the work. The Public Agency shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

EXHIBIT "D"
CONSULTANT'S FINANCIAL DISCLOSURE STATEMENT¹

Consultant will comply with all conflict of interest laws and regulations including, without limitations, City's Conflict of Interest Code (on file in the City Clerk's Office) as required by Section 4.10 of this Agreement. It is incumbent upon the Consultant to notify the City pursuant to Sections 7.1 and 7.5 of any staff changes relating to this Agreement. The City Manager has made the following determination and Consultant, by his/her signature, acknowledges said determination.²

- A. In accomplishing the scope of services of this Agreement, all officers, employees and/or agents of Consultant will be performing a very limited and closely supervised function, and, therefore, unlikely to have a conflict of interest arise. No disclosures are required of any officers, employees, and/or agents of Consultant. Consultant duties are as follows:

[Handwritten mark]

City Manager

Consultant Signature & Title

- B. In accomplishing the scope of services of this Agreement, Consultant will be performing a specialized or general service for the City, and there is substantial likelihood that the Consultant may make or participate in making a governmental decision which may have a foreseeable material effect on a financial interest. As a result, the Consultant shall be subject to the Disclosure Category "Consultant" of the City's Conflict of Interest Code.

[Handwritten mark]

City Manager

Consultant Signature & Title

¹ Title 2, Division 6, California Code of Regulations Section 18701(a)(2). Pursuant to a contract with a local government agency, a consultant shall be required to file a Statement of Economic Interest if that consultant will: "(A) Make a government decision whether to: (1) Approve a rate, rule or regulation; (2) Adopt or enforce a law; (3) Issue, deny, suspend or revoke any permit, license, application, certificate, approval, order or similar authorization or entitlement; (4) Authorize the agency to enter into, modify or renew a contract provided it is the type of contract which requires agency approval; (5) Grant agency approval to a contract which requires agency approval and which the agency is the party or to the specifications for such contract; (6) Grant agency approval to a plan, design, report, study or similar item; or (7) Adopt, or grant approval of policies, standards or guidelines for the agency or for any subdivision thereof; or (B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code, under Governmental Code Section 87302."

² Disclosure by Consultants: Consultants shall be included in the list of designated employees and shall disclose pursuant to the broadest disclosure category in the City's adopted Conflict of Interest Code, subject to the following limitations: The City Manager may determine in writing that a particular consultant, although a "designated position", is hired to perform a range of duties that is limited in scope and closely supervised, and, thus, is not required to comply with the disclosure requirements in the City's adopted Conflict of Interest Code. Such written determination shall include a description of the consultant's duties. The City Manager's determination is a public record and shall be retained for public inspection in the same manner and location as the City's adopted Conflict of Interest Code.